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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179352
Party	Plaintiff McDonald's Corporation
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Submission	Motion to Consolidate
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

McDONALD'S CORPORATION,	)	Opposition Nos. 91179290
	)	91179352
Opposer,	)	
	)	
v.	)	
	)	
PATCHELL HOLDINGS, INC.,	)	Serial Nos. 74/192,851
	)	77/020,407
Applicant.	)	

OPPOSER'S MOTION TO CONSOLIDATE NOTICES OF OPPOSITION

Opposer, McDonald's Corporation, by its attorneys, hereby moves the Trademark Trial and Appeal Board (the "Board") pursuant to TBMP § 511 and Fed. R. Civ. P. 42(a) for an order consolidating the above-referenced Oppositions filed by Opposer. As set forth more fully below, the two Oppositions in question involve substantially identical legal and factual issues concerning two trademarks sought to be registered by Applicant, each of which utilize Opposer's famous "Mc" formative, for use in connection with various educational services related to physical fitness programs for fitness clubs and centers. Each of the marks has as its distinctive element the "Mc" prefix followed by a generic word. Consolidation is appropriate in this case because it will generate significant savings in time, effort, and expense without prejudicing any party. Accordingly, in the interests of convenience, efficiency, and judicial economy, Opposer requests that the Board consolidate the above-captioned Oppositions.

In support of its request, Opposer states as follows:

I. The Oppositions Should Be Consolidated.

1. The applications to register Applicant's "McFIT," and "McGYM" marks for use in connection with various educational services related to physical fitness were recently published for opposition. Opposer has opposed each of the published applications and the Board has instituted Opposition proceedings in connection with both applications. Each of the Notices of Opposition contains substantially identical factual and legal allegations contesting the applications on grounds of likelihood of confusion and dilution.

2. As set forth in Section 511 of the Trademark Trial and Appeal Board Manual of Procedure, "when cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases." See, TBMP § 511; see also Fed. R. Civ. P. 42(a) ("[w]hen actions involving a common question of law or fact are pending before the court ... it may order all the actions consolidated"); Ritchie v. Simpson, 41 USPQ2d 1859 (TTAB 1996), *rev'd on other grounds,* 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999) (cases consolidated despite differences in marks and goods); Hilson Research, Inc. v. Society for Human Resource Management, 27 USPQ2d 1423 (TTAB 1993) (opposition and cancellation consolidated).

3. In determining whether to consolidate, the Board should consider the savings in time, effort, and expense to be gained from consolidation as well as whether any actual prejudice will result from consolidation. See, TBMP § 511; see also World Hockey Ass'n v. Tudor Metal Products Corp., 185 USPQ 246, 248 (TTAB 1975) (ordering consolidation where issues were substantially the same and consolidation benefited both parties). While identity of the parties is not required to consolidate, where the same parties are involved in multiple actions the case for consolidation is strengthened. See, TBMP § 511 ("... identity of the parties is another factor

considered by the Board in determining whether consolidation should be ordered..."); Bigfoot 4X4, Inc. v. Bear Foot, Inc., 4 USPQ2d 1444 (TTAB 1987).

5. The present case strongly warrants consolidation. First, the marks contested in both Oppositions all have as their only distinctive element the prefix "Mc." The distinctive element of each mark is followed by a generic word, which is intended to be used in connection with educational services related to physical fitness. In addition, both of the Oppositions in question stem from the same central facts and raise identical issues of likelihood of confusion and dilution. See Exhibits A-B.

6. Moreover, the identical parties are named in both of the Oppositions, and, therefore, consolidation would generate significant savings in time, effort and money. See, TBMP § 511; see also World Hockey, 185 USPQ 246, 248 (ordering consolidation where it would be "advantageous to [all] parties in the avoidance of the duplication of effort, loss of time, and the extra expense involved in conducting the proceedings alternately"); see also 9 Fed. Prac. & Proc. § 2384.

7. Finally, the instant motion has been filed very early in the proceedings. In fact, the instant motion has been filed prior to both Applicant filing an Answer in either of the Oppositions in question and the issuance of any substantive rulings by the Board. Thus, no prejudice will befall any of the parties from consolidation, and consolidation is also necessary to ensure consistent judgments. See, e.g., Rio Energy Int'l, Inc. v. Hilton Oil Transport, 776 F. Supp. 120, 122 (S.D.N.Y. 1991) (ordering consolidation where common questions of law and fact existed as well as the danger of conflicting findings).

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the Board enter an Order pursuant to TBMP § 511 and Fed. R. Civ. P. 42(a) consolidating the above-captioned Oppositions, and granting such other relief as the Board deems appropriate.

Respectfully submitted,

MCDONALD'S CORPORATION

Date: September 21, 2007

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CERTIFICATE OF SERVICE

I, Maurice E. Finnegan, III, an attorney, state that I served a copy of the foregoing Opposer's Motion to Consolidate Notices of Opposition upon the following parties:

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via Federal Express, on this 21 day of September, 2007.

/Maurice E. Finnegan, III/
Maurice E. Finnegan, III

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